respondent is therefore entitled to $56,000/- as a fair and reasonable award under general damages. In the result the award of $1,118,440/- for post-trial loss of earnings is set aside.

As regards special damages the award of $899,000/- for pre-trial loss of earnings is set aside. The award of (a) $4,000 for loss of earnings for two months, (b) $4,000 for partial loss of earnings for 20 weeks at $200 per week and (c) $200 for damage to wrist watch, all of which have been agreed upon by the parties, are hereby confirmed.

The present awards are as follows:-

General damages:

(a)	For pain and suffering	$5,000
(b)	Loss of earning capacity	$51,000
	Total	$56,000

Special damages:

(a)	Loss of earnings for 2 months at $2,000 per month	$4,000
(b)	Partial loss of earnings for 20 weeks at $200 per week	$4,000
(c)	Damage to wrist watch	$200
	Total	$8,200

Interest:

With regard to interest, in view of the long delay in which this case came up for trial, there will be 6% interest on general damages from the date of service of the writ instead of 8% as awarded and 3% interest on special damages from the date of the accident instead of 4%. It should be borne in mind that unnecessary delay in the disposal of cases of this nature tends to increase the amount of interest. We will like to remind counsel of their duty to secure early trials so that this can be avoided.

The appeal is hereby allowed. With regard to costs we order that the appellant is entitled to his taxed costs in this appeal and that the respondent is entitled to his taxed costs in the court below. The deposit is to be refunded to the appellant.

Appeal allowed.

Solicitors: *Kean Chye & Sivalingam; Cheang Lee & Ong.*

DATUK DR. MURUGASU SOCKALINGAM & ANOR. v. SUPERINTENDENT OF LANDS AND SURVEYS, FIRST DIVISION, SARAWAK

[F.C. (Raja Azlan Shah L.P., Lee Hun Hoe C.J. (Borneo) & Abdoolcader F.J.) May 10 & July 29, 1983]

[Kuching – Federal Court Civil Appeal No. 50 of 1983]

Land law – Land Acquisition – Appeal against award – Injurious affection – Sarawak Land Code (Cap. 81), s. 60.

In this case the appellants appealed against the award by the learned judge in respect of land acquired by the Sarawak Government for the extension of the Sarawak Airport. The learned judge upheld the award of the Superintendent of $30,000.00 per acre for Lot 331 and $25,000.00 per acre for the portion from Lot 614. In addition he awarded 5% for injurious affection under section 60(1)(c) of the Land Code in respect of Lot 614.

Held: (1) the learned judge had gone very carefully into the various sales referred to by the valuers and had correctly upheld the award by the Superintendent;

(2) the learned judge was correct in rejecting the substantial claim for diminution of value due to severance and injurious affection as he correctly stressed that despite the severance, the potentially of the remaining portion of the land did not seen to have been affected; the learned judge had exercised his discretion judicially and had not acted wrongly in awarding $13,175.00 for injurious affection.

Cases referred to:

(1) *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243, 246.
(2) *Superintendent of Lands and Surveys, First Division* v. *Chin Fah Siong,* Sarawak Civil Appeal No. 3 of 1959.
(3) *Khoo Peng Loong & Brs.* v. *Superintendent of Lands and Surveys, Third Division* [1966] 2 M.L.J. 156, 158.
(4) *Gajanan Vinayak* v. *Assistant Collector* A.I.R. 1924 Bom 54, 55.

FEDERAL COURT.

Mathew Chan for the appellants.

Abdul Razak Tready, Legal Adviser, Lands and Surveys Department, Kuching for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court): This is an appeal against the award made by the learned Judge in respect of the land acquired by the Sarawak Government for the extension of the Kuching airport.

In 1950 Datuk Dr. Murugasu Sockalingam owned Parcel 16 Block 233 Kuching North Land District, 6½ Mile Penrissen Road, Kuching. In

1960 this parcel was mutated into two lots, that is, Lots 330 and 331. He then transferred the two lots to his four sons, namely, Mahendra, Rajendra, Sivadas and Devadas in equal shares. They in turn executed a Power of Attorney in favour of their parents Datuk Dr. Marugasu Sockalingam and Datin Evelyn Sockalingam nee Voon Nyuk Tshin. In 1969 the State Government acquired 5.319 acres of Lot 330 for road reserve at $9,000.00 per acre. The registered proprietors accepted the award through their attorneys. Consequently, Lot 330 was mutated into four lots, namely, Lots 614 (79.37 acres), 615 (0.918 acres), 616 (4.401 acres) and 617 (1.645 acres). The parts acquired for road reserve made up of Lots 615 and 616. Lots 614 and 617 were realienated to the four registered proprietors. In 1971 in order to accommodate bigger aircraft such as the Airbus the airport had to be extended. To do so the State Government decided to acquire considerable areas of land near the vicinity of the airport. Among other pieces of land, the whole of Lot 331 containing 2.14 acres and a portion of Lot 614 containing 10.54 acres were acquired.

Notice that the land was likely to be needed for the extension of the airport under section 47 of the Land Code (Cap. 81) was published in the Sarawak Government Gazette vide Notification No. 1588 dated July 9, 1971. Lot 331 was covered by this notice. Another notice covering Lot 614 appeared in the said Gazette vide Notification No. 1110 dated April 28, 1971. The relevant dates at which the market values for Lots 331 and 614 fell to be ascertained were therefore July 9, 1971 and April 28, 1972 respectively. Section 60(1)(a) states clearly that the market value of the acquired land must be assessed at the date of the publication of the Notification under section 47. When a decision was made on the exact areas of land needed for the airport extension a declaration under section 48 would be published in the said Gazette. For the purpose of this appeal the notice under section 48 was published on September 11, 1975. The State Government would then give notice under section 49 to all persons interested in the acquired land of its intention to take possession of the said land and would request them to appear at the Land Office to state the nature of their interests in the said land, their claims to compensation for such interests and their objections, if any, to the measurements surveyed. An inquiry would then be held by the Superintendent of the Division concerned. In the present case the Superintendent of the First Division held the inquiry on November 7, 1975. He heard and considered the written reports of both the Government valuer (Mr. Robon Chung York Bin) and the valuer for the objectors (Mr. Henry Yeo of C.H. Williams, Talhar, Wong and Yeo Sdn.) Both valuers used the comparative methods in assessing the market value.

For the purpose of this appeal the relevant provisions of section 60 of the Land Code are as follows:–

> "60(1) In determining the amount of compensation to be awarded for land resumed under this Part, the court shall take into consideration –
>
> (a) the market value at the date of the publication of the notification under section 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under section 48;
>
> (b) .....
>
> (c) the damage, if any, sustained by the person interested, at the time of the Superintendent's taking possession of the land, by reason of severing such land from his other land;
>
> (d) the damage, if any, sustained by the person interested, at the time of the Superintendent's taking possession of the land, by reason of the resumption injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings.
>
> ....."

In respect of Lot 331 Mr. Robin Chung considered $30,000.00 per acre as a fair market value. So that for 2.14 acres the amount of compensation would be $64,200.00 He assessed Lot 614 at $25,000.00 per acre giving an amount of $236,500.00 for 10.54 acres. In his report Mr. Robin Chung pointed out that the hugeness of Lot 614 would have the effect of (a) limiting the number of potential purchasers and (b) causing a glut in the property market if the whole parcel of land were developed or offered for sale. The unusual size of the land would therefore be said to have a negative effect on its market value as Suffian, J., as he then was, observed in *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.*[1] when disagreeing with the opinion of the valuer for the objector that big lots were move viable than small lots in a town with a small population. He said:–

> "... Common experience has shown that in areas where there is a small population the price per unit of area for a large parcel is less than the price per unit of area for a small parcel ..."

On the other hand, Mr. Henry Yeo assessed Lot 331 at $42,000.00 per acre and Lot 614 at

$36,000.00 per acre plus compensation for injurious affection and severance under section 60(1)(c) and (d) of the Land Code. The Superintendent accepted the valuation of the Government valuer and awarded the appellants $30,000.00 for Lot 331 and $25,0000.00 for Lot 614.

As they were dissatisfied with award they appealed in pursuance of section 56 to have the matter referred to the High Court for determination. In the High Court another Government valuer Mr. Charles Arthur Bateman (D.W.1) gave evidence. He also used the comparative method by relying on six sales. He considered the award of $30,000.00 per acre for Lot 331 was over generous. He valued the land at $23,000.00 per acre. As regards Lot 614 he assessed the value at $17,000.00 per acre as against the award of $25,000.00 per acre made by the Superintendent. He did not consider that there should be an award for severance because the remaining area could still developed as one unit and could enjoy road frontage. It could still be developed as a residential project.

The question of procedure was raised in *Aik Hoe's case.*[1] Reference was made to the unreported case of *Superintendent of Lands and Surveys, First Division* v. *Chin Fah Siong*[2] where the Court of Appeal of Sarawak, North Borneo and Brunei purported to set out certain procedure to be followed. It must be remembered that at the time Malaysia was not in existence. Also, the civil procedure rules used in the Superior Courts in the three Borneo states were different from those used in Malaya and Singapore. After Malaysia the Supreme Court Rules were extended to Sabah and Sarawak. This was the first step towards making the practice and procedure uniformed in all the courts.

One thing the Sarawak Land Code does not lay down is a clear-cut procedure. Suffian, J., as he then was, pointed out correctly that no where does the Code say that the Judge must sum up in every case. In a short and simple case it may be convenient to do so. But, in a complicated case it is not so convenient to do so. In *Khoo Peng Loong & Ors.* v. *Superintendent of Lands and Surveys, Third Division,*[3] Lee Hun Hoe, J., as he then was, did not sum up in that case as he considered it to be complicated as it was a consolidated hearing of four objections. He followed as closely as possible the procedure adopted in Malaya. The Rules of the High Court 1980 are now applicable to both High Courts in this country. The Subordinate Courts Act, 1948 has been extended to Sabah and Sarawak. It is both healthy and desirable that practice and procedure of all the courts in the country should be uniform. We are, after all, not dealing with a capital case whereby the Judge would have to sum up as laid down clearly by the provisions of the Criminal Procedure Code, particularly section 197 before the assessors give their opinions or section 223 before the jury returns their verdict.

Before us appellants maintained that even the Government valuer at the inquiry conceded that the potential for industrial development of Lot 331 should not be discounted. But because of the land locked nature of the land that planning permission was not necessarily forthcoming. It was contended that in view of Lots 332 and 333 being approved for industrial developments, Lot 331 possessed immediate prospects for industrial development. Since Lot 614 and Lot 331 belonged to the same owner, Lot 331 could obtain access from Lot 614. It was pointed out that the Government valuer (D.W.1) agreed that Lot 331 was comparable to Lots 332 and 333 after making adjustment for payment for premium. It is therefore the submission of the appellants that the learned Judge should revise upwards the valuation of Lot 331 by the Government valuer at the inquiry.

The learned Judge had gone very carefully into the various sales referred to by the valuers so both sides. We do not propose to go into them again as we agree with the view of the learned Judge. At page 138 of the Appeal Record Part I, the learned Judge pointed out that:–

> "... the Objectors' valuer had taken into account sales which ought to have been rejected on the ground that the consideration stated therein was not genuine and had also taken into account sales of front residential lots without making deduction for the fact that Lot 331 was a second or rear lot. For these reasons the whole basis of his valuation of the subject land at $42,000.00 an acre at the material date could not validly be sustained. In my opinion, the report of the Objectors' valuer was rather misleading."

Regarding Lot 614 the learned Judge said at page 142 of the Appeal Record Part I that:–

> "... the Objectors' valuer fell into error in assessing the subject land as though the title condition had already been converted to industrial, commercial and/or residential purposes, when in actual fact, it was limited to agricultural purposes at the material date by taking into consideration all the eight sales abovementioned whose title condition

was either 'open', industrial/commercial or residential. Besides, the Objectors' valuer took into account Sales 2 and 3 when the consideration stated therein was held not to be genuine thereby taking into account something which he ought not to have taken into account. So, instead of a starting point of $26,071 an acre he wrongly considered $40,000.00 an acre as a starting point. Moreover, the Objectors' valuer considered front lots and third lot (Lot 215) only and conveniently forgetting that a substantial portion of Lot 614 should be deemed to be fourth and fifth lots after mutation. In sale of Lot 294 which was a fourth lot from Penrissen Road on July 21, 1973 on analysis the land value was given at $6,800.00 an acre. On November 28, 1972 on sale of Lot 297 which was a fifth lot adjoining to Lot 294, on analysis the land value was given by the government valuer at $8,000.00 an acre. It should be remembered that these 2 sales related to residential lots with newly built houses standing thereon."

The learned Judge dealt with the diminution in value as a result of the severance and injurious affection for the remaining portion of Lot 614. He said at page 146 of the Appeal Record Part I as follows:–

"In my opinion, the complaints of height restrictions, noise pollution due to low flying aircraft, residents living in fear on the outskirts of the airfield reserve and other related factors are not a reasonable one inasmuch as the first construction of the Kuching airport was in 1949-50 and the runway was completed in September, 1950. It was about this time that the father of the Objectors became the registered owner of the parent lot Parcel 16 Block 233 Kuching North Land District (Ex. D3(a)). Since every airport is subject to extension from time to time due to workload and increase of passenger traffic the Objectors, who became the registered owners of the subject land through a voluntary settlement, could not be heard to voice their objections to the abovementioned factors. As regards the height restriction which might be imposed under Aerodrome (Controlled Area) (Kuching Aerodrome) Order 1976 vide P.U.(A) 5 of January 13, 1977 and Aerodrome (Control of Obstruction) (Kuching Aerodrome) Order 1976 vide P.U.(A) 6 of January 13, 1977 when the remaining portion of Lot 614 was to be mutated into smaller lots for development purposes in the future, it was pointed out that since the subject land is at least 20 feet below the runway level of Kuching airport this might not prevent the erection of 2-storey houses ... However, tall high-rising flats would not be allowed as these would interfere with the approaches of incoming and outgoing aircraft. Despite this limitation, the testimony of the government valuer was that the remaining portion of Lot 614 could still be used for agricultural purposes as restricted by the condition of title ..."

The learned Judge rejected the substantial claim for diminution of value due to severance and injurious affection and the contention of the objectors' valuer that an area of approximately 12.35 acres would be rendered totally useless as the land happened to be in the flight path of incoming and outgoing aircraft as he found no reliable evidence to support such a contention.

It was not in dispute that the remaining portion of Lot 614 had the potentiality of being developed for housing purposes but that such potentiality was not yet ripe at the material date. The reason was that residential lots along Airport Road and Penrissen Road near the subject land had not yet been developed by 1972. Although the valuers from both sides did not dispute this potentiality they disagreed on the time factor for the potentiality to emerge. For these reasons the learned Judge was perfectly right to stress that despite the severance, the potentiality of the remaining portion of the subject land was not and did not seem to have been affected.

The question of injurious affection found some support from the learned Judge, because after acquisition of a portion of Lot 614, the frontage of the subject land was reduced by slightly less than one-third in length. Despite this, the remaining area still retains and possesses a very substantial frontage into Penrissen Road and would still be viable for development as a self-contained housing estate. He criticized the Superintendent of Lands and Surveys for making the following statement:–

"Lot 614 is a huge lot containing 79.37 acres and is not cultivated and lay idle for years. According to the surveyor's report, there are no building, crops or fruit trees on the land. If this is so, the government should have taken action on breach of title condition. If the government be asked to pay injurious affection on the case in hand, it could equally be argued that when government acquired land for road development, the public be asked to pay for the cost of road construction where the remaining lands would benefit from the construction of the road in enhanced value."

From the above the learned Judge inferred that the Superintendent refused to pay compensation for injurious affection for reason which could not be supported in law. He therefore decided to award an additional 5% for damages for injurious affection citing in support a passage from the Indian case of *Gajanan Vinayak* v. *Assistant Collector.*[4] The passage reads:–

"... It has been contended that by reason of the Government acquiring a part of the frontage of the land belonging to the claimant, the land behind the plot acquired would, by reason of such acquisition, be injuriously affected. That may be the case. The Judge has taken that into consideration in the amount that he has awarded, by adding 5 per cent and we do not think there is anything unfair in that excess."

The learned Judge upheld the award of the Superintendent of $30,000.00 per acre for Lot 331 and

$25,000.00 per acre for the portion of 10.54 acres from Lot 614. In addition he awarded 5% for injurious affection under section 60(1)(c) of the Land Code in respect of Lot 614. This came to $13,175.00. The total amount is $340,875.00. He ordered each party to pay his own costs.

Appellants contended that the learned Judge erred in law when he related his award of an additional 5% for damages for injurious affection to the value of the portion of Lot 614 acquired instead of to the value of the remaining portion of Lot 614. They maintained that the two assessors in fact awarded the 5% depreciation on the value of the remaining portion of Lot 614. There is no merit in this ground.

Where a claim is made involving diminution in value it is essential to have two valuations relating to the appellants' other land, namely, one the market value immediately prior to acquisition of the land and the other immediately after acquisition. The difference between the two valuations may be taken as representing the extent of the injurious affection relating to diminution in value of the remaining land. The appellants' valuer did so before the learned Judge. He put the market value for the remaining land at $30,000.00 per acre based on the valuation of the land acquired. He assessed the land acquired at $36,000.00 per acre but gave allowances for irregular size, access, title conditions and so forth in quantifying the value for the remaining land prior to acquisition. On this point the learned Judge observed at page 146 of the Appeal Record Part I as follows:–

"Now, since the basis of valuing the 10.54 acres of Lot 614 which had been acquired at $36,000.00 an acre, had been rejected by the court, it seems to follow that the valuation of the remaining area at $30,000.00 an acre would be untenable and could not be supported."

To be fair it should be pointed out that before the Superintendent the appellants' valuer did not specify the amount for severance and injurious affection. He could not expect the Superintendent just to pluck a figure out of the air in making his award. He specified the sum of $688,300.00 based on a depreciation of $30,000.00 to $20,000.00 per acre – a difference of $10,000.00 when requesting the Superintendent to refer the case to the High Court. This sum was later amended to $1,720,750.00. Claims relating to severance and injurious affection are often difficult to substantiate. In the present case it is even more so on the particular facts. To succeed a valuer must quantify such damages realistically and convincingly. In determining a claim for injurious affection, a valuer should examine all the probable consequences of the acquisition in so far as they affect the owner's other land. Any damage sustained or likely to be sustained by the owners must be properly assessed. Quantification of damages should, as in the case of severance, be on a basis which can be supported by evidence. The learned Judge clearly rejected the valuation of the appellants' valuer. With respect, we think the learned Judge has exercised his discretion judicially and has not acted wrongly in principle in awarding $13,175.00 for injurious affection. We do not think an appellate court should interfere in the circumstances.

For reasons given we would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Chan, Jugah, Wan Ullok & Co.*

S. MARIAPPAN v. GOVERNMENT OF MALAYSIA

[F.C. (Wan Suleiman, Abdul Hamid & Hashim Yeop A. Sani F.JJ.) May 25 & August 10, 1983]
[Kuala Lumpur – Federal Court Civil Appeal No. 108 of 1982]

Practice and Procedure – Appeal – Point of law not raised in Court below – Discretion of Court to allow point to be raised on appeal – Jurisdiction – Disciplinary powers – Whether Public Services Commission has powers – Public Services Disciplinary Board Regulations, 1972, regs. 3 & 17 – Federal Constitution, arts. 132 & 144.

Administrative Law – Disciplinary authority over members of public service – Public Services Commission or Disciplinary Board – Clerical and Technical group – Public Services Disciplinary Board Regulations 1972, regs. 3 and 17 – Federal Constitution, arts 132 & 144.

The appellant in this case had been dismissed from service by the Public Services Commission on the ground that he had failed to comply with a Treasury instruction which required daily collections exceeding $500.00 (for currency notes and coins) and $2,000.00 (for cheques and postal orders) in addition to cash to be deposited within a prescribed time in a local bank. On appeal it was argued for the first time that the Disciplinary authority for the purpose of the appellant was the Public Services Disciplinary Board and not the Public Services Commission and therefore the exercise of the power of dismissal by the Public Services Commission was wrong and the purported dismissal was void and of no effect.